

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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DILLARD DEPARTMENT STORES INC
ATTN MS BILLIE TREAT
1600 CANTRELL RD
LITTLE ROCK AR 72201-1110

Appeal Number: 04A-UI-03459-ET
OC 02-22-04 R 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 17, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 19, 2004. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sales associate for Dillard Department Store from November 3, 2003 to February 1, 2004. The employer had issued an attendance warning to the claimant stating that further incidents of absence or tardiness would result in termination. The claimant was scheduled to work January 30, 2004, but did not have a ride to work and had returned her phone to the store without getting a new one at that time so she did not call the employer to report her absence.

Because of the previous warning, the claimant assumed her employment was terminated and did not call the employer or report for her shifts January 31 and February 1, 2004, and the employer determined she voluntarily quit her job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Although the claimant assumed her employment was terminated, she did not contact the employer to ask about her job status and it was not unreasonable for the employer to conclude she voluntarily quit by abandoning her position. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. IDJS, (Unpublished, Iowa App. 1984). Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer's policy, the claimant is considered to have voluntarily left her employment without good cause attributable to the employer. Benefits are denied.

DECISION:

The March 17, 2004, reference 01, decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/kjf